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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

GIGA WATT, Inc., a Washington
corporation,

Debtor.

Case No. 18-03197 FPC 11

Chapter 11

**DECLARATION OF MARK D.
WALDRON IN SUPPORT OF
CHAPTER 11 TRUSTEE'S MOTION
FOR ORDER APPROVING
AGREEMENT AND GENERAL
RELEASE OF CLAIMS (CARLSON
ADVERSARY)**

I, Mark D. Waldron, declare as follows:

1. I submit this declaration in my capacity as the duly-appointed Chapter 11 Trustee in the bankruptcy case of the above-captioned debtor (the "**Debtor**" or "**Giga Watt**") and in support of the *Chapter 11 Trustee's Motion for Order Approving Agreement and General Release of Claims (Carlson Adversary)* (the "**Motion**"), filed herewith. The statements set forth herein are based on my investigation of the Debtor's affairs, which is ongoing, and, except where otherwise noted, are based on personal knowledge. If called as a witness, I would and could competently testify thereto. Unless otherwise defined herein, capitalized terms have the meanings ascribed to them in the Motion.

Declaration of Mark D. Waldron in Support of Motion to Approve Carlson Settlement - Page 1

1 2. Pursuant to the Motion, I request approval of that certain *Agreement*
2 *and General Release of Claims* (the “**Agreement**”), which resolves a dispute with
3 Carlson with respect to the TNT Facility. The Agreement also clarifies the status
4 of the Estate’s interest in the leases with respect to the TNT Facility.

5 3. The Agreement provides a full general release between the Estate and
6 Carlson, the release by Carlson of any interest in the TNT Facility, and the
7 transfer by Carlson’s affiliate, Terrain Holdings LLC, to the Estate of a
8 condominium located in Quincy, Washington. According to a title report that I
9 ordered from Frontier Title & Escrow, the condominium is free and clear of any
10 mortgages, loans or other encumbrances. I have also consulted with local brokers
11 to establish and determine the value of Condo, which is estimated at between
12 \$350,000 and \$400,000.

13 4. In addition, the TNT Landlords have agreed on a new deadline to
14 reject or assume the leases related to the TNT Facility. In short, the Agreement
15 will allow me, as Trustee, to fully and robustly market the TNT Facility without
16 the overhang of uncertainty created by the litigation with Carlson.

17 5. The TNT Facility has four buildings, Buildings A, B, C, and H
18 (referred to as H1 and H2), which the Debtor leases from TNT Business Complex
19 LLC. Pre-petition, the Debtor operated the TNT Facility and invested in tenant
20 improvements at the TNT Facility. Prepetition, and effective May 14, 2018, Giga
21 Watt entered into a power contract with the DC PUD, the *Interconnection and*
22 *Service Agreement* (the “**TNT Power Contract**”), pursuant to which the DC PUD
23 agreed to provide up to 3.3MW of power to the Debtor’s operations at the TNT
24 Facility, subject to terms of the TNT Power Contract. The DC PUD terminated
25 power to the TNT Facility in December 2018. When I was appointed, the TNT
Facility was shut down and not operating.

1 6. Pursuant to an Order dated September 30, 2019 [ECF 380], I
2 obtained post-petition credit in order to restore the electrical service and otherwise
3 re-open the TNT Facility. I continue to operate the TNT facility.

4 7. The dispute that is the subject of the Motion centered on control and
5 ownership of the TNT Facility and on the proper treatment of the Carlson Proof of
6 Claims.

7 8. The Agreement resolves this dispute in its entirety. The material
8 terms include a full mutual release between Carlson and the Estate. Carlson has
9 agreed to assign to the Estate any and all leasehold interests in the TNT Facility
10 that he or his affiliates may hold or assert to hold.

11 9. Subject to the Agreement, Carlson's affiliate, Terrain Holdings LLC,
12 will transfer to the Estate a condominium that is located in Quincy, Washington
13 and that has an estimated value, based on conferral with local brokers, of between
14 \$350,000 and \$400,000. I intend to hire a broker promptly and sell the Condo for
15 the benefit of the estate.

16 10. In addition, in my judgment, the Agreement brings certainty to the
17 Estate's leasehold interest in the TNT Leases. First, Carlson and the TNT
18 Landlords release each other with respect to the TNT Leases. In addition, the TNT
19 Landlords agree that the Debtor has an existing right of possession to the TNT
20 Facility based on the TNT Leases. They also agree that the deadline to assume or
21 reject the TNT Leases is 120 days after the Court enters an Order approving the
22 Agreement. The deadline is subject to extension.

23 11. I am confident in the claims that are asserted in the Complaint.
24 However, Carlson vehemently denied the allegations and presented every
25 indication of a willingness to contest the assertions. Therefore, in my judgment,

1 the probability of success on the merits was far from certain and weighed in favor
2 of the settlement.

3 12. Carlson has asserted that he does not own significant assets. Indeed,
4 an affiliate, Terrain Holdings LLC, is transferring the Condo to the Estate. Thus,
5 even if the Estate won the dispute, collection of damages would have been
6 problematical. Therefore, collectability informed my judgment regarding the
7 settlement.

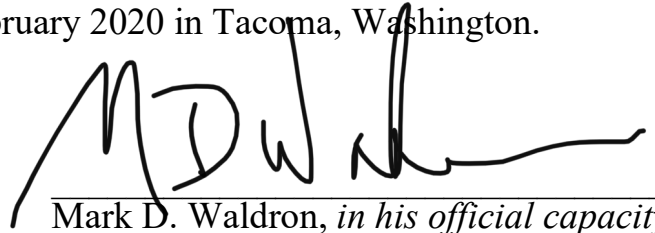
8 13. The dispute included substantial facts and was document intensive.
9 The hearing on the Preliminary Injunction alone lasted an entire day. There were
10 multiple witnesses and issues regarding intent. While I believe that the Estate
11 would have won certain issues on summary judgment, other issues would have
12 had to go to trial. I estimate that the litigation would have cost the Estate more
13 than \$400,000 in attorneys' fees if it had gone through trial. It also consumed a
14 disproportionate amount of the professionals' energies in a case that has limited
15 resources. The dispute also created uncertainty in the market and hindered my
16 efforts to sell the TNT Facility. The foregoing complexity, expense,
17 inconvenience, and delay inherent in the dispute informed my decision to resolve
18 the dispute with Carlson as set forth herein.

19 *[This Declaration continues on the next page.]*
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1 14. In my judgment, the Agreement serves the paramount interest of
2 creditors by resolving the distraction, expense and uncertainty that was inherent in
3 the dispute over ownership of the TNT Facility.

4 To the best of my knowledge, I declare under penalty of perjury that the
5 foregoing is true and correct.

6 Executed this 3rd day of February 2020 in Tacoma, Washington.

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8 Mark D. Waldron, *in his official capacity as*
9 *Chapter 11 Trustee in the above-captioned*
10 *case*